Joint Custody and Child Visitation after Divorce: Focusing on DV Cases

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Abstract
Domestic Violence has been a private matter for long periods. Grassroots voluntary women’s organizations began to support DV victims in the 1990s. The Act on the Prevention of Spousal Violence and the Protection of Victims was enacted in 2001. Coincidently, the joint custody movement was activated and the number of petitions for rights of access after divorce increased because Japan does not apply joint custody. In 2014 Japan became a signatory to the Hague Convention on the Civil Aspects of International Child Abduction. The Convention will influence the present single custody system and rights of access after divorce because the majority of member states apply the joint custody system and the Convention premises that children should be raised by a father and a mother in any case. This paper discusses the relationship of DV, and joint custody and rights of access, including the results of the questionnaires collected from the counselors who assist DV victims. It also implies the recommended policies which would not be detrimental to DV victims and their children concerning joint custody and rights of access.

Key words
domestic violence, joint custody, rights of access, the best interests of the child
Introduction

Traditionally domestic violence had been regarded as results of women’s faults in private family lives in Japan. In the absence of governmental initiatives, they had to endure the severe violent situations or had to escape by their own resources. Sometimes they were helped by grassroots voluntary women’s organizations if they were lucky enough to access them in the 1990s. After the enactment of the Act on the Prevention of Spousal Violence and the Protection of Victims (the DV Law, hereinafter), the social system of protecting the victims seems to be facilitated; however, it still has a long way to go that sufficient and effective policies are provided to all DV victims.

According to the data officially announced by the Gender Equality Bureau Cabinet Office in 2013, the number of DV counseling cases in public spousal violence counseling and support centers recorded 89,490 cases in 2012, which is 2.5 times higher than 2002 which was the year after the enactment of the DV Law\(^1\). The number of counseling cases in police stations recorded 43,950 cases in 2012, which is 3.1 times as of 2002 (Gender Equality Bureau Cabinet Office, 2013). 32.9% of Japanese women experienced DV according to the survey conducted in 2011 and the rate has not changed for more than a decade (Gender Equality Bureau Cabinet Office, 2012). Grassroots voluntary women’s organizations, feminist counselors in the public sector, attorneys, and DV researchers have repeatedly insisted on improvement of insufficient support to DV victims in Japan\(^2\).

DV problems came to be regarded as one of social problems by grassroots voluntary women’s organizations activities, the results of DV survey conducted by a feminist private group, some municipalities and the government, and the enactment of the DV Law in 2001; however, it is hard to prove that
the situation of DV victims has been improved dramatically for the decade.

Meanwhile, this decade brought a new phase to the relationship between parents and children. One is joint custody movement and the other is increase of petition for rights of access after divorce. The joint custody movement started in 2000 and it established a national level network in 2008 (Joint Custody Advocacy Groups Network, 2010). The number of petitions for rights of access recorded three times in 2012 as of 2002 (Courts in Japan, 2002a; 2012a). Joint custody and rights of access primarily facilitates the bond of parents and children. The children might be relieved to see both parents even after divorce. However, in the case of DV, joint custody and rights of access could be tools to keep control over the victims and the children. DV victims and their children might be unable to escape from perpetrators forever. The rate of physical violence cases out of all divorce cases reported to family courts was 27.2% in 2012 (Courts in Japan, 2012b).

The new stream of the relationship between parents and children seemed to be accelerated by the process of accession of the Hague Convention on the Civil Aspects of International Child Abduction, which was enforced in 2014. Because most of signatory countries apply joint custody and secure the rights of access, furthermore, the articles of the Hague Convention can be interpreted to apply them as a premise.

Part I of this article is an overview of the DV problems, its history, the DV Law, and the system for supporting DV victims. Part II provides the reader with the background of joint custody and rights of access. Part III examines the results of questionnaires collected from eleven counselors who work for supporting women, especially DV victims. Part IV implies the recommended policies Japan should take concerning joint custody and rights of access in DV cases.
Part I: Domestic Violence in Japan

On that day he’d been drinking from the morning and I’d been beaten and kicked by him. My daughter, who was five years old, was afraid of him, so she was playing outside by herself. He grabbed my hair all the time in violence, but at that time he cut my hair, so I became a close-cropped hair. Then he grabbed an iron pipe, and said “I will let you not be able to move anymore.” He shut the window of the room. I thought this was very dangerous because neighbors could not hear me. I decided abruptly to run out of the apartment and grabbed my daughter’s hand and ran and ran with my ached legs (Yamaguchi, 2010).

A. Domestic Violence Data

According to the latest official data, 32.9% of women have experienced spousal violence which is physical or psychological or sexual violence or a mixture of these two or three kinds of violence. Three questions as follows were used to screen respondents for victimization: (1) Have you experienced hitting, kicking, throwing things, and pushing away, etc. from your spouse? (2) Have you experienced offensive language as denying your personality, being monitored in social relationships, and being threatened with harm to you or your family members from your spouse? (3) Have you experienced enforced sexual intercourse from your spouse? 25.9% of Japanese women have experienced violence of type (1) which is physical violence, 17.8% of them have experienced violence of type (2) which is psychological violence, and 14.1% of them have experienced violence of type (3) which is sexual violence.

4.4% of women have experienced fatal violence (Gender Equality Bureau Cabinet Office, 2012). 67.2% of DV victims went to see doctors. The rate of working DV victims after escaping from violent situations accounts for
66.9% and the rate of full time workers accounts for 22.0%. The rates are lower compared to the rates of all single mothers as 83.0% of single mothers have vocations and 39.2% of them are engaged in full time work (Gender Equality Bureau Cabinet Office, 2007). The annual income of DV victims’ households is 1,510,000 yen, which is 61.8% of all single mothers’ households’, and 21.0% of child bearing households’ (Gender Equality Bureau Cabinet Office, 2007; Ministry of Health, Labour and Welfare, 2006). More than 30% of DV perpetrators also abuse their children physically (Gender Equality Bureau Cabinet Office, 2003). Tomoda et al. reported that young adults who witnessed domestic violence during childhood had damage in their brains (Tomoda et al., 2012). Also, 54.5% of children of DV victims the author interviewed in the fall of 2009 had mental disease and 66.7% of them were caused by DV perpetrator fathers’ behaviors through the verbal description of DV victim mothers (Yamaguchi, 2010).

**B. Overview of History**

In Japan spousal violence had been minimized for long periods as it had been justified as a form of discipline to wives by husbands or regarded as a trifling matter in couples’ daily activities, as expressed by an old proverb, “Even dogs do not pay attention to the quarrels of couples.” These norms reinforced the absence of government initiative and a lack of social policies and services.

During the 1980s, several grassroots women’s groups emerged to address women’s issues, but it was not until early 1992 that a women’s group specifically addressing domestic violence was formed.

In 1992, a group of Japanese women researchers, practitioners, and activists established the Domestic Violence Action and Research Group
and conducted a nationwide questionnaire survey. The nationwide study dispelled the myth that domestic violence in Japan was not serious and found that it cut through socioeconomic boundaries.

In early the 1990s, human rights concepts were disseminated through the United Nations World Conference on Human Rights held in Vienna in 1993. Violence against women came to be recognized as violation of human rights, and in the same year the Declaration on the Elimination of Violence against Women was adopted by the United Nations. Subsequently, the World Conference held in Beijing in 1995 called upon member nations to recognize violence against women as a serious social problem and to develop policies to address it.

Many grassroots women’s groups attended the World Conference partly because of adjacency. After they came back to Japan with the full conviction of their mission to support women in domestic violence, they started to found DV shelters and 1998 was later named as the year of the shelter movement foundation.

During the late 1990s, the Japanese government slowly began recognizing the serious nature of DV. In 1999 the government conducted a DV survey and issued the report next year, in which the fact that 5% of respondents had experienced fatal DV was reported (Prime Minister’s Council for Gender Equality, 2000). DV surveys were also conducted by some prefectures and municipalities, and the results were always as severe as the government’s survey.

In 1996, the United Nations Special Rapporteur, Radhica Coomaraswamy reported to the United Nations Commission on Human Rights that nations which do not take any actions against DV should be regarded as guilty as criminals (Coomaraswamy, 1996). Consequentially, a Five-year Review of the Implementation of the Beijing Declaration and Platform for Action
(Beijing + 5) was held in the General Assembly in 2000. At its special session, “The Political Declaration and Further Actions and Initiatives to Implement the Beijing Declaration and Platform for Action” was adopted, which called upon member nations to enact DV laws domestically (United Nations, 2000).

According to the efforts of grassroots women’s organizations, the results of the DV survey, and the pressure from the international community, the Japanese government decided to start to draft the DV Law at last. The first DV Law was enacted in 2001, which was amended three times in 2004, 2007, and 2013.

C. The DV Law

The DV Law consists of preamble, six chapters including thirty articles, and supplementary provisions. The Law defines violence as bodily harm, and the words and deeds which cause psychological harm equivalent to physical violence, and defines victims as persons who have been subjected to spousal violence. Practically, the words and deeds which cause psychological harm equivalent to physical violence are interpreted as psychological violence and sexual violence by Gender Equality Bureau Cabinet Office. The term, spouse, includes his/her former spouse after divorce and a person who is in a de facto state of marriage, even if it has not been legally registered, and according to the amendment in June 2013, it also includes his/her dating partner who shared or shares the domicile as the main home.

Chapter I prescribes the duty of prefectures, which is establishing their own basic plans for prevention of spousal violence and protection of victims. Municipalities are also recommended to establish their own basic plans. Chapter II stipulates that spousal violence counseling and support centers
(SVCSC, hereinafter) should be established in each prefecture, and further, in municipalities if possible. Prefectural SVCSCs are usually equipped with public shelters. SVCSC should undertake some of services as follows; counseling, medical and psychological reference, providing temporary protection, offering information of employment promotion, housing procurement, use of systems for social assistance, and shelter coordination. SVCSC should endeavor to collaborate with private organizations. Chapter III provides the ways of protecting victims in general. Persons who witnessed DV should endeavor to notify the fact to SVCSC or a police officer. Physicians or other medical personnel who detect spousal violence may notify the fact to SVCSC or a police officer. Chapter IV ordains protection orders. In cases of a high possibility that victims receive serious harm of their lives or bodies after being subjected to bodily harm or threatening intimidation which announces an intention to inflict harm on the lives or bodies of victims, the district courts should issue protection orders upon petitions from victims. The courts can rule a six-months refrain from approaching the victims and a two-month period of leaving the domicile having been shared with the victims. In addition to the stated items, it is prohibited to request meetings, to tell the victims matters that imply being monitored, to carry out rude and violent words and deeds, to make a phone call and send fax and e-mails except in cases of urgent necessity, to send filthy materials, animal carcasses or other disgusting materials, to reveal matters that harm the victims’ dignity, and to reveal sexually insulting materials and send documents, pictures or other sexually insulting materials. The protection order covers DV victims’ children, relatives, persons who have close relationships in social lives. The court should issue the protection order by a repeated petition confirming the situation deliberately. Persons who have violated a protection order should be punished by imprisonment with
work for not more than one year or a fine of not more than 1,000,000 yen (Act on the Prevention of Spousal Violence and the Protection of Victims, 2007). The number of petitioning protection orders was 3,152 and the admittance rate was 78.7% (Gender Equality Bureau Cabinet Office, 2013).

D. Support System of DV Victims

DV victims need support from many agencies to secure their safety and relief for their lives. There are many ways to escape from violence and rebuild their new lives practically. They may access at first a private shelter, a police station, a hospital, an SVCSC, a welfare office, or other private or public women’s counseling centers. They may apply to welfare offices for child rearing allowance or public assistance besides counseling. They may live in welfare facilities as step houses.

However, DV victims experience secondary damage everywhere they access and they cannot find residences and jobs easily. DV came to be regarded as a social problem, but the surrounding situation of DV victims is still difficult. Additional hardship to DV victims is that they might have to respond to perpetrators’ petitions of child visitation.

Part II: Joint Custody and Rights of Access

The girl was 10 years old. Her parents got divorced and her mother had to work all day long because of low wages. She visited her father with her younger brother and stayed one night every month. She did not want to visit her father but she did because he paid the child support if they visited him. It was a bargaining point. She knew her mother needed the child support and she wanted to give her mother a rest once a month. Additionally, her younger brother was looking forward to seeing his father. She always considered about people around her, so she was a leader in the elementary school and the teacher
evaluated her. She could not tell that she had been patient with sexual abuse from her father for a long time (Hasegawa, 2012).

A. Custody

(1) Meaning and History of Custody

Under Japan’s Civil Code, minor children are subject to the parental authority of their parents. Parental authority is exercised jointly by both parents during marriage. Parental authority bestows the right and duty of caring for and education, determination of the child’s residence, determination of disciplinary punishment, permission of occupation, and management of property of parents. After divorce, parental authority is exercised by one parent (The Civil Code, 2013)\(^4\).

There is a case to separate custody of residing with the child and taking care of the child from parental authority, which means bestowing parental authority on one parent (mostly fathers) and custody on another parent (mostly mothers). However, this is an exceptional measure and in most cases one parent is vested with parental authority including all items (Noguchi, 2011; Tanaka, 2011)\(^5\). The cases that mothers were vested with parental authority were 93\% in mediation or trial in 2012 (Courts in Japan, 2012c).

To be precise, Japan is now in controversy of “joint parental authority and joint custody” after divorce. Jurisprudential scholars and attorneys use such an expression, but the advocate groups (mainly fathers) call them joint parental right and pursue to amend the Civil Code which could bestow joint custody particularly after divorce.

Hereinafter, the word *joint custody* will be used in this paper because this is the most contestable point and also it might help to avoid confusion.
An amendment of the Civil Code on single parental authority was proposed three times (in 1959, 1993, and 1996) in Legislative Council of the Ministry of Justice but it did not produce any result (Uemura, 2012). Jurisprudential scholars began to examine joint custody around 1980, but the concept was not disseminated (Inagaki, 2011a, 2011b; Uemura, 2012). In the 1990s, the rate of divorce increased. There were more than 250,000 recorded cases in 1999 (Ministry of Health, Labour and Welfare, 2009). In the same year, the Basic Act for Gender-Equal Society, which recommends cooperative rearing of children in a family was enacted and in 2001, the DV Law which helps wives escape from violent homes was established. Under these circumstances, the first Japanese organization for fathers not residing with their children, “Fathers’ Website,” was founded in 2000 and this organization developed to Oyako netto [Parents and Children Network] and Kyodo shin-ken undo netto waku [Joint Custody Advocacy Groups Network] whose aim is the enactment of a law about joint custody and rights of access (Joint Custody Advocacy Groups Network, 2010). They conducted lobby activities, set up lectures, established hot lines, and published related materials in which they insisted on problems about non-existence of rights of access, maternal preference for single custody, and parental alienation syndrome (PAS), etc. They thought that the ratification of the Hague Convention was a good chance to disseminate their goal and promoted it actively because the essence of the Convention which orders the child to return to their habitual country and to secure the rights of access seemed to be identical to their aims. In parallel with the media’s attention to the Hague Convention, joint custody attracted public attention.

In 2007, the scholars and attorneys published a book, Kodomo no fukushito kyodoshinken [Child’s Welfare and Joint Parental Authority], and from that year several scholars began to announce model plans of joint parental
authority and custody (Tanaka, 2011).

The opinions of scholars are divided into positive and negative concerning the introduction of joint custody. As a whole, the scholars and attorneys are deliberate in introducing joint custody, partly because they know cases of high conflict in their experiences. They are still discussing the way and the system to achieve joint custody because they believe the ratification of the Hague Convention will have a big influence to the present system of parental authority and the amendment of related laws concerning parental authority in the near future (Tanaka, 2011).

(2) Joint Custody and DV

NPO Shinguru mazazu foramu [NPO Single Mothers’ Forum] and NPO Zenkoku sheruta netto [NPO National DV Shelter Network] conducted a survey to collect the opinions of single mothers about joint custody and published the report in 2010. 25.1% respondents out of 211 single mothers checked psychological abuse and 19.0% respondents checked physical violence as the reasons of their divorce (Other items are as follows: difference of value [23.4%], not giving life expenses [12.8%], gambling of the partner [11.2%], debt [12.8%], alcohol [4.8%], adultery of the partner [11.7%], adultery in my own [2.7%], not taking care of the family [5.9%], not get along well with the family and relatives [7.4%], sexual problems [5.9%], physical and psychological sickness [2.7%], missing [2.7%], others [6.4%]). As for the introduction of joint custody, the positive rate was 11.5%, the negative rate was 46.1%, the rate of unknown was 38.2%, and the rate of no answer was 4.1%. The report recommended optional joint custody and added that parents should not enjoy joint custody just in case there are violent behaviors against the child or behaviors against
the interests of the child (NPO Shinguru mazazu foramu & NPO Zenkoku josei sheruta netto, 2010).

The fact that not a few women divorced due to DV might be attributed to one of the agent of conducting the research, NPO Zenkoku sheruta netto; however, this fact should not be minimized.

Joint custody is an ideal measure for the children who experience their parents’ divorce, exercised by cooperative and peaceful fathers and mothers who think the stability and happiness of the children as the most important value. However, the items concerning parental authority provided by articles of the Civil Code are difficult to execute with cooperation in case of DV. DV victims have to live near perpetrators for their children’s access. DV victims have to consult about everything regarding children to perpetrators. It means that DV victims would be under the control of perpetrators for long periods. Such a condition must infringe on the children’s safety and living conditions.

Considering these circumstances, Hasegawa insisted on reevaluating single custody inciting the Swedish example, and Ogawa introduced the Australian example. Both examples illustrate a danger to stereotyped joint custody and the restriction of joint custody in case of the existence of high conflict between parents or of DV. Hasegawa said that it is time to reconsider joint custody, and Ogawa said that he had heard the scholars’ voices from the nations of exercising joint custody that Japanese single custody could avoid useless conflicts along with exercising joint custody (Hasegawa, 2012; Ogawa, 2013).
Figure 1: Joint Custody Controversy


(3) Joint Custody and the Hague Convention

At present 74 out of 90 signatories to the Hague Convention exercise joint custody (The Committee on Judicial Affairs House of Councilors, 2013). Duncan, Deputy Secretary General of the Hague Conference on Private International Law, commented that a signatory does not need to change to joint custody system (“Kazokuho kaiseisezu…”, 2010). Takahashi, the leader of the Legislative Council of the Ministry of Justice Working Group of Procedure about Children’s Returning on the Hague Convention, explained that the Implementation Act was made to be applicable to the single custody and joint custody system (The Committee on Judicial Affairs House of Representatives, 2013).

However, it is presumably practical that the ratification of the Hague Convention would have a big influence on the present system of parental authority and the amendment of related laws concerning parental authority in the future as mentioned above. Hayakawa, a member of the working group, addressed that the ratification would give a momentum to disseminate a global concept of child rearing by both parents after divorce and to start
comprehensive amendment of family laws (The Committee on Judicial Affairs House of Councilors, 2013).

The next part will explain rights of access, which is now becoming a huge problem among DV victims.

B. Rights of Access

There had been no specific provision for child visitation in the Civil Code. The concept of child visitation was established by the judgment of Tokyo Family Court in 1964, which admitted a mother who did not have parental authority to enjoy visitation (Sunthari, 2009).

Parents can enjoy visitation after divorce, however, it was not established for a long period. According to the survey conducted in 2011 by Ministry of Health, Labor and Welfare, 27.7% of single mother house-holds exercise child visitation by fathers, and 37.4% of single father house-holds exercise child visitation by mothers (Ministry of Health, Labour and Welfare, 2011). Most cases are exercised once or twice a month (Tanamura, 2013a). There are five private organizations all around Japan which support the practice of rights of access, but most of them are very small sized organizations (Tanamura, 2013b).

The child visitation has been focused in Japan rather recently. As mentioned above, in 2000, a fathers’ rights organization was started. They have expanded their advocacy activities about rights of access year by year along with the request of joint custody. Additionally, for these several years, the ratification of the Hague Convention, whose articles provide for rights of access, has been focused in Japanese society. Practically, the data imply that the number of petitions for child visitation to family courts in 2012 increased three times as of 2002 and 68.2% of them were from fathers
(Tanamura, 2013b). The increase of fathers’ petitions means that their attitude toward child rearing has changed to be positive. The reason for this is partly because after the bubble economy, working fathers began to find their identities at home in the long recession in the 1990s (Kajimura, 2011). The low birthrate for consecutive years might also have some relationship with fathers’ eagerness toward child rearing these days.

In 2011, the parents who had demanded child visitation welcomed the amendment of the Civil Code. The Civil Code 766 articulated, for the first time, that parents should discuss and decide child visitation and child support in divorce by mutual consent.

This is the output of the following process in the judicial field from the viewpoint of the interest of children. In 2000, the first Act of the Prevention, etc. of Child Abuse was enacted and the second amendment of this act in 2007 recommended consideration of parental authority for the purpose of protection of children from abuse and interests of children. In 2009, the study group of parental authority for prevention of child abuse was founded by a commission of the Ministry of Law and it announced the report, which contributed to making the workshop and the expertise committee. Then, they announced the report again. Based on this report, the Civil Code 766, 797, 820, 822, 834, 835, 836, 840, 841, 842, 849, 852, 857 and a part of the Domestic Relations Trial Act and the Child Welfare Law were amended (Shibuya, M., Shibuya, M., 2012).

In parallel with the presumption of the ratification of the Hague Convention, the Civil Code 766 was especially focused. Parents are supposed to check whether they discussed and decided child visitation and child support in the document of divorce after the effect of the amendment in April 2012.

In April 2013, the Supreme Court judged that if a parent deters a child from seeing the other parent in spite of concretely scheduled visitation, the
former parent must be fined (“Koni awasenakereba….”, 2013).

One more judgement by Supreme Court in 2000 has to be added here clearly that child visitation should not be regarded as a claim of petitioner, which is a substantial right (Kajimura, 2011). Though the word, rights of access, is generally disseminated and likely to be thought as a sort of human right, not all but the majority of scholars’ interpretation of it is a duty or right of taking appropriate measures for children (Kajimura, 2011; Kawashima, 2010; Ninomiya, 2004; Tani, 2009).

The following section will illustrate what the counselors who are consulted by many women, including DV victims at actual spots, think about rights of access and joint custody.

**Part III: Counselors’ Experiences and Perception**

She was worried about everything. She was unstable and often weeps suddenly. I suggested to her to go to a mental clinic. She had a one year old baby who still needed breast feeding. Her husband was a professional boxer some years ago. She had a picture in which her cheeks were swollen up by the husband’s hitting with his fist. In the mediation process in the family court, the husband strongly demanded rights of access as a bargaining point of paying child support. The decision that the child meets his father influenced the mother’s mental condition. She was scared by the husband very much. And also, she had a strong hatred against him. She could not permit him to pretend to be a good person in front of the child (an episode from a counselor).

**A. Methods**

The author sent the questionnaires by e-mail to 10 counselors who the author met before in several occasions on July 1st, 2013 and delivered the same questionnaires to 17 attendants after a DV training meeting held in
Nagoya Gender Equality Promotion Center on July 6th, 2013. The author asked them to send back their answers by email or fax by July 20th, 2013. The purpose of this questionnaire is to describe the present situation and future tasks about rights of access, the Hague Convention, and joint custody as perceived by the counselors working at actual spots.

The questionnaire asked demographic items and open ended items as follows: 1. How long is your career as a counselor of women’s problems? 2. Where is your working place? Please choose one. (Ward office, Gender equality promotion center, Women’s counseling center, Single mothers’ facility, Private organization, others) 3. What is your age? Please choose one. (20s, 30s, 40s, 50s, 60s) 4. Have you encountered DV victims who had difficulty with rights of access? If yes, what is the difficulty? 5. What do you think of the Hague Convention? What is the point you expect? What is the point you do not expect (or are worried about)? 6. What do you think about joint custody? What is the point you expect? What is the point you do not expect (or are worried about)? All the procedures were conducted abiding by Japanese Society for the Study of Social Welfare Ethical Guidelines. The answers in open ended items were analyzed using content analysis developed by Krippendorf (Krippendorf, 1980). This paper doesn’t discuss the question 5 because it focuses on the joint custody.

B. Results

A total of 11 counselors responded to the questionnaire. The length of their careers ranged from 1 to 25 years. The number of respondents who had careers from 1 to 5 years was 4 (36.3%), from 6 to 10 years was 5 (45.5%), and more than 10 years was 2 (18.2%).

The number of respondents working at Ward office was 1 (9%), at Gender
Equality Promotion Center was 6 (54.5%), at Women’s Counseling Center was 2 (18.2%), Private organization was 2 (18.2%), and at others was 1 (9%) who works at a lawyer’s office. One of the respondents worked for two places.

Their ages ranged from the 40s to the 60s. The number of respondents who were in their 40s was 1 (9%), in their 50s was 4 (36.3%), and in their 60s was 6 (54.5%).

All of the counselors have encountered the problems of DV victims and rights of access. The difficulties were a mental burden to DV victims (9: 81.8%), bargaining with paying the child support (4: 36.3%), a mental burden to children (3: 27.2%), enforcement from family courts (2: 18.2%).

8 (72%) counselors wrote down the points of expectation about joint custody. 1 (9.0%) did not expect anything in joint custody. 2 (18.2%) counselors kept the column vacant. The expected points were that sharing responsibility would be good for parents, including expenses (4: 36.3%), that Japan would catch up with the international standard (1: 9.0%), that children could enjoy love from both parents (1: 9.0%), that children could enjoy relationship with a parent in case one parent might lose parental authority (1: 9.0%), and that it might deter troubles of rights of access (1: 9.0%).

10 (90.9%) counselors wrote down the points of anxieties. 1 (9.0%) counselor kept the column vacant. Their anxieties were that DV victims would be subjected to having a relationship with perpetrators for a long period (8: 72.7%), which means unsafe and scared lives for DV victims for a long time control, that DV perpetrators might have parental authority (6: 54.5%), which leads enforcement of visiting and increase of child abuse, and that children would be subjected to relationship with their fathers, sometimes abusive fathers (5: 45.5%), which means unsafe and scared lives for the children and the increase of abuse. Other anxieties are lack of
law support in case the respondents are in trouble with conducting joint custody (2:18.2%), children’s confusion caused by moving between fathers and mothers (1:9.0%), insufficient discussion in the government and the society about child welfare and the stable environment for them (1:9.0%), the possibility of causing a big confusion in actual spots because even rights of access and the child support has made a big confusion (1:9.0%), difficulty of conceptually throwing away the traditional custom of single custody (1:9.0%), ignorance of parental authority per se in Japan (1:9.0%), and an easy way to imitate Western culture (1:9.0%).

C. Discussion

Many counselors encountered difficulties with rights of access especially in DV cases. They commented that fathers recently started to regard rights of access as the bargaining matter of child support. The amendment of the Civil Code 766 was specifically featured in the media, and only the fact that parents were supposed to check the columns of child visitation and child support in the document of divorce has been strengthened and disseminated. It is ironical that the amendment of the Civil Code 834 which provides for suspension of parental authority by family courts in case of inappropriate attitude against the interests of children has not been a hot topic at all in media.

The counselors’ impression is evidenced by Judicial Statistics. The number of adjudication for rights of access in mediation process in family courts was 3,184 in 2002 and increased to 8,828 in 2012. The number of admission of rights of access was 1,703 in 2002 and increased to 5,736 in 2012. The rate of admission increased from 53% to 65% (Courts in Japan, 2002a; 2002b; 2012a; 2012d). Tanamura pointed out that this tendency is the result
of focusing on the task by mediation committees, investigators, mediation officers, and judges in family courts (Tanamura, 2013b)⁸. Child visitation is good per se, but it is doubtful that if it is good in every case according to the results of the questionnaires in which there were some comments on enforcement of rights of access by family courts in the mediation process. It might be harmful and dangerous to push every case in one direction.

In Japan there are only 5 private organizations to support child visitations in case parents cannot conduct them directly by themselves and three of them are rather small organizations (Tanamura, 2013b). The numbers are not sufficient to respond to all parents and children at all. This fact might influence most of the counseling about child visitation from DV victims.

Thus, the counselors’ perception was as follows, based on their experiences: In spite of the lack of facilities of safe places to conduct child visitation, family courts began to promote rights of access and perpetrators regarded them as a bargaining tool of child support and DV victims and children suffered mental instability to respond to perpetrators’ capricious requests only to get a small amount of child support⁹.

Concerning joint custody, many of them wrote down the expected points, but each sentence is very short like a kind of slogan and lacks variety. They might think that sharing responsibility by applying joint custody, including financial matters, is ideal. One counselor’s comment endorsed it, insisting that fathers should have responsibility for rearing their children because most of them don’t like to have responsibility. Their impression is well evidenced by the survey conducted by the government. According to it, only 19.7% of divorced mothers accepted the child support, despite the fact that 37.7% of them had made promises with the children’s fathers after divorce. About half of the reasons for not making a promise were that the mothers had given it up beforehand because the fathers had had
no will or no ability to pay it (Ministry of Health, Labour and Welfare, 2011). Their expected comments might be regarded as a reflection of the severe reality of irresponsible fathers.

Their anxiety points had much volume and varieties compared to the expected points. Their anxieties were focused on DV victims, their children, and perpetrators. They were thinking of the linkage of batterers programs and bestowing parental authority. One counselor proposed that bad achievers in the batterers programs should be deprived of parental authority. DV problems had a strong impact on the comments about joint custody.

Even if mothers were not involved in DV, the counselors still did not agree with joint custody. They hoped to rethink about children’s stability substantially and mentally in the government and society. They also required rethinking of parental authority per se and demanded establishment of new law supports for the parents who might be in difficulties in conducting joint custody.

Thus, in case that it would become true, the future exercise of joint custody was greeted negatively overall by the counselors. Because they knew well about Japanese fathers’ irresponsible attitude in general and how hard it would be in DV cases because they already had some experiences in rights of access involving DV and were worried about children’s stability and lack of resources which could support the parents who might exercise joint custody.

**Part IV: Overall Discussion and Implications**

One day two women came in front of Magistrate Ooka with one child. They insisted to each other that “I am the child’s mother.” Magistrate Ooka said “You should pull the arms of the child from both sides, and the winner is the child’s mother.” They started
pulling the arms from both sides and the child began to cry of pain. Then, one woman let go her hold of the child. The other woman won, and when she tried to take the child back with her, Magistrate Ooka stopped her and said “You are not the child’s mother because mother cannot pull the child’s arms hardly until he cries of the pain.” (an episode from Ooka seidan)

DV has been regarded as a social problem over a decade; however, DV victim’s support system is still insufficient. Before solving these insufficiencies, other issues, such as rights of access and joint custody which might be detrimental to the safety and living conditions of them and their children came out these several years. The counselors’ perception based on their experiences illustrated the present situation very well.

Rights of access and joint custody might be a recommended measure to secure meetings of children and parents after divorce for children’s mental health and stability per se. However, it is clear that these executions might be harmful for DV victims and their children because they might mean a long control from perpetrators. Perpetrators can determine the domiciles of their children, discipline their children, refuse or permit their children’s occupations, administer their children’s property based on the Civil Code. It means that perpetrators can exercise many tools to control their ex-spouses and their children. Actually in the US, where joint custody has been conducted for more than two decades, many post separation violence or post separation battering cases have occurred.

In terms of parental authority, it should be desirable that dissemination of this concept which is not a human right of a parent and is preferred by the interest of children because the Civil Code 766 and 820 are clearly stipulated based on this principle.

In regards to the interests of children, it should be recommended to discuss
the contents of the interests of child, to share the concepts in society, and
to develop the index of it. The development of the index might be difficult
because it must be an individual matter, however, subjective index might help to share common points of view in society and to bring judgment in
a persuasive way. Relating to the index of interests of children, an index
of child abuse should be developed and involved in it.

And also, related to child abuse, a subjective DV victim index should
be developed and shared much more in every phase. In Japan, according
to Act of the Prevention, etc. of Child Abuse, DV against a child’s mother
is regarded as child abuse by Article 2 (4) (Act of the Prevention, etc.
of Child Abuse, 2011). Therefore recognition and determination of DV
might save the children from the dangerous exercise of rights of access
and joint custody.

The next step should be about the improvement and development of the
judicial field. In determination of rights of access and joint custody in the
future, it would be very important how they understand child abuse and
DV and how they use such a kind of index mentioned above. Their training
would be a prerequisite to understanding the dynamics of DV victims, their
children, and DV perpetrators.

Also, the increase of staff would be needed in practice of joint custody
because many conflicts could be predicted along with it. Yamada commented
that in her 30 years career as an attorney, she had never encountered couples
who could have raised their children in cooperation (“Nihonno hahaoya
koritsusasenu…”, 2010). This general fact might mean an increase of the
burden on the justice field.

Additionally, the number of visiting support organizations should be in-
creased in order to conduct rights of access domestically, and internationally,
based on the Hague Convention. The quality of staff members in those
organizations would also be a prerequisite to judgements of risk concerning each case and each occasion.

Lastly, it might be important to make a society and a social system which is not detrimental to divorced single parent house-holds. Handa mentioned that there is a common consensus in Japanese people that couples do not divorce if the situation is not so bad that they can cooperate in bringing up their children. It means that a wife or a husband often endures their marriage life to their mental limit. Such a condition would cause much friction between both parents in exercising joint custody after divorce (Handa, 2013). The endurance of their marriage lives must be related to economic disparity, housing problems, and people’s prejudice rooted in gender norms. So, addressing these underlying problems in the long run could decrease parents’ friction after divorce and bring peaceful cooperation for the purpose of just pursuing the happiness of their children.

**Conclusion**

This paper contributes to our understanding of the risk about conducting child visitation and joint custody in the future in DV cases.

Joint custody and child visitation should be promoted in a slow and steady way not jeopardizing children’s secured and stable lives. Parents should keep in mind the preferences of the interests of children. Tanamura, who is one of promoters of joint custody, commented that Japanese divorced parents were immature and inclined just to adhere to their children in a self-centered way without thinking of their children’s happiness (“Oyawa kichinto kobanareseyo”, 2011)

It should be necessary to build up the consensus in Japanese society what is parental authority, what is DV, and what is the interest of child.
And, the consensus will be crucial to simplify the complex and confused situation of Japan and to start concrete social policies. The discussion based on the Convention of the Rights of the Child which was ratified in 1992 is prerequisite in the process of building up the consensus. Its Article 9 (1) ordains that separation from his or her parents is admitted if the children are abused and the children should have opportunities to participate and make their views known in the proceedings to the decision (Convention of the Rights of the Child, 1989).

Child visitation and joint custody after divorce in the future should be decided and exercised carefully enough based on the best interest of each child after the scrutiny of their each background by well-trained people involved under the firm consensus of Japanese society.

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Notes
1. There are two types of organizations to support DV victims. One is a private sector and the other is a public sector. This figure does not include the number of cases which the private sector transacted.
2. DV shelter staff, counselors, activists, survivors, attorneys, and researchers attend the workshops and discuss problems and solutions to support DV victims at National DV Shelter Conference, which is held every year in Japan by NPO National Women’s Shelter Network.
3. This is the data of divorce by arbitration and judicial divorce which occupy about 10% of all divorce cases. See Ministry of Health, Labour and Welfare. (2009).
4. The age of majority in Japan is 20. See the Civil Code Article 4.
5. The old Civil Code before World War II bestowed parental authority only on
fathers during marriage and after divorce under patriarchal system. However, it was considered that infants were supposed to be in difficulties without mothers, thus, custody system was stipulated apart from parental authority in the old civil code. In such a case parental authority executes management of property and matters concerned with law. After mid of the 1960s mothers became to enjoy parental authority more than fathers because of the end of patriarchal system on laws, development of nuclear families, and dissemination of women’s rights. See Kawashima, S. (2010) and Uemura, M. (2012).


7 Kawashima pointed that people who enjoy rights of access are inclined to pay the child support, which means people who are interested in their children and the children’s happiness are inclined to willingly pay the expense. See Kawashima, S. (2010). However, in DV cases, the situation is completely different. Some father retained the children longer than scheduled without notice and he didn’t pay the child support willingly. See Yamaguchi, S. (2015).

8 An attorney Kani who has worked with DV victims more than a decade addressed a different view. In his experiences some investigators report to judges that rights of access is appropriate without seeing the children these days. The judges are so busy that they agree with the opinions of the investigators. Additionally, he pointed that PA (Parental Alienation) had become referred more often in family courts recently. See Kani, Y. (2013).

9 Child support is 43,482 yen (US$ 400) per month in average. See Ministry of Health, Labour and Welfare. (2011).

10 Magistrate Ooka had lived from 1677 to 1752. He was a Japanese samurai in the service of the Tokugawa Shogunate. During the reign of Yoshimune Tokugawa, he worked as a magistrate of Edo. His career was depicted in Ooka seidan, however, it is said that some of them were fictions.
References


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